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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,742	10/05/2001	David Muradian	HEUR-009CIA.	5363

7590 08/25/2003
Michael A. Blake
Sierra Patent Group, Ltd.
P.O. Box 6149
Stateline, NV 89449

EXAMINER

PERT, EVAN T

ART UNIT PAPER NUMBER

2829

DATE MAILED: 08/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Drawings

1. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action.

Specification

2. The abstract is objected to for containing subject matter inappropriate for summarizing the claimed invention. At p. 47, lines 10-14, the paragraph beginning "It is emphasized that..." should be deleted to overcome this objection. While the examiner appreciates applicant's recitation of patent office rules as part of the abstract, the anticipatory statement is inappropriate for an abstract used for summary of the invention. The abstract is provided as a summary, to aid in searching, for example.

3. At page 12, line 1, "Xmin, Ymin" should seemingly read "Xint, Yint".

4. At page 13, line 7, "wafer 10" should read --wafer 100--.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 6,586,263.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of the instant case (i.e. the method) and claims 2-3 of the instant case (i.e. apparatus for performing the method) are obvious variants of the patented claim 2, collectively broader in scope.

Regarding claim 1, the step of "collecting" encompasses the step of "creating" in the patented claim 1, the step of "filtering" encompasses the steps of "defining" and "detecting" in the patented claim 1, the step of "determining" encompasses the step of "determining whether said actual spacings are randomly distributed", the step of "selecting pairs" encompasses "identifying dense zones", and the "calculating" encompasses the "calculating" (i.e. developing an estimate) of the patented claim 2.

Regarding claims 2-3, the "apparatus" claimed has no particular structure claimed, but rather is drawn to an apparatus with "means" for performing the claimed steps of the method of claim 1. It would have been obvious to one of ordinary skill in the art to develop an automated apparatus such as a computer program to practice the method of claim 1 of the issued patent, motivated to automatically handle large amounts of data by computer as is well known in the art of data processing methodology.

Allowable Subject Matter

6. Claims 4-18 are allowed.

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7. The following is a statement of reasons for the indication of allowable subject matter: The qualified prior art, presuming the exclusion of applicant's U.S. Patent 6,586,263 by Terminal Disclaimer, does not disclose applicant's method and apparatus particularly characterized by *determining offset* between origins of overlying layer patterns *by statistical correlation of interlayer defect data pairs*.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Evan Pert whose telephone number is 703-306-5689. The examiner can normally be reached on M-F (7:30AM-3:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamand Cuneo can be reached on 703-308-1233. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-0956.

ETP
August 18, 2003


EVAN PERT